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Eighteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 293rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 May 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.293/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Namibia (CAT/C/28/Add.2)

1. At the invitation of the Chairman, Mr. Nujoma, Mr. Tjiviku, Mr. Makando and Mr. Nakwatumbah (Namibia) took places at the Committee table.

2. The CHAIRMAN welcomed the Namibian delegation and invited it to introduce the initial report contained in document CAT/C/28/Add.2.

3. Mr. NUJOMA (Namibia) recalled that, under the apartheid regime, thousands of Namibians had been tortured, ill-treated and imprisoned by members of the South African defence forces and police. After independence on 21 March 1990, the Government, in accordance with its policy of national reconciliation, had continued to employ most of those forces. To redress the harm caused during the colonial period, the framers of the Namibian Constitution had included in article 8, entitled "Respect for human dignity", paragraph 2 (b) which provided that "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Bill of Rights, as provided for in article 3 of the Constitution, could be invoked in court, and under article 24 (3) human dignity and protection from torture constituted fundamental human rights from which no derogation was permitted in any circumstances.

4. Since torture was prohibited by the Constitution, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had not been incorporated into national legislation. It was, however, possible to invoke the Convention in any court of law. The international agreements to which Namibia was a party were binding on Namibia and self-executing. At present there was no specific case before the courts involving the applicability of treaties and other international agreements binding on Namibia. In any event, the Ministry of Justice, with the technical assistance services of the United Nations Centre for Human Rights, was drafting various statutes that would incorporate human rights instruments into Namibian legislation.

5. Turning to information on the implementation of each of the articles of the Convention, he reminded members that torture was prohibited not by laws but by the Constitution itself. However, in order to reinforce the prohibition against torture and inhuman treatment, the Supreme Court had, in a landmark case (Ex parte Attorney-General, Namibia: In re corporal punishment by organs of the State), declared corporal punishment imposed and inflicted by or on the authority of a State organ to be illegal.

6. Where article 2 was concerned, any instance of torture was considered as a criminal or civil wrong and the victim could bring civil proceedings. For example, a woman who had been accused of theft by her employer and kept in chains for three weeks without food had been awarded compensation. The

law-enforcement agencies were subject to very strict supervision in matters relating to torture. The Namibian police had issued administrative directives aimed at preventing torture from occurring within its ranks.

7. With regard to article 3 of the Convention, the Namibian Parliament had passed a new Extradition Act, according to which no person would be extradited to the requesting State if there was any likelihood that he or she might be tortured or sentenced to death on return and no person could be extradited or expelled in the absence of a decision by an immigration tribunal. The individual was entitled to legal representation during both the court hearing and an appeal to the High Court. Turning to article 4 of the Convention, he said that all acts of torture or cruel, inhuman or degrading treatment or punishment were considered to be common-law offences. In connection with article 5, there was no specific legislation making it necessary for Namibia to establish its jurisdiction in cases of torture committed or attempted aboard a ship or aircraft registered in Namibia. As to the implementation of article 6, if it became necessary to proceed against a person alleged to be a torturer, the relevant provisions of the Extradition Act would be invoked. No such case had arisen.

8. With regard to the implementation of article 7 of the Convention, if a person alleged to have committed any offence referred to in article 4 was found in Namibia and claimed by another country, the matter would be dealt with according to Namibian extradition law. If the person was a national of Namibia and had committed the alleged offence in a requesting State, he or she would be tried under Namibian criminal law. In connection with article 8, it should be noted that article 3 of the Extradition Act divided requesting States into three categories: States which had extradition treaties with Namibia; States which were members of the Commonwealth Scheme for the Rendition of Fugitive Offenders and had designated Namibia as a State enjoying reciprocity; and States whose requests were left to the discretion of the President because there was no extradition agreement between them and Namibia and they were not members of the Commonwealth. As to article 9 of the Convention, there was no legislation on mutual judicial assistance, nor had Namibia entered into any such scheme with any other country in connection with the offences covered by the Convention.

9. In connection with the implementation of article 10 of the Convention, he said the materials used in the training of personnel of law-enforcement agencies were aimed at bringing the prohibition against torture to the trainees' attention. As to article 11, there was a system in place for receiving and dealing with complaints from inmates in prisons or police lock-ups. With regard to article 12, torture perpetrated by a State agency, such as the police department, was treated as an offence against both departmental rules and criminal law.

10. Referring to article 13 of the Convention, he said that anyone who claimed to have been subjected to torture was entitled to lodge a complaint with the police. If a complainant or witness maintained that his rights had been violated during the inquiry, he could lodge a complaint with the Prosecutor-General, who decided whether or not to initiate proceedings. With regard to article 14, torture was considered to be a serious offence liable to a penalty if proved; but it was also a civil offence for which the victim

could initiate civil proceedings and apply for compensation for the civil injury caused. As to article 15, under the common-law system in force in Namibia, a statement made by an individual against his will could not be used as evidence except possibly against the person suspected of having extracted the statement under duress. As far as article 16 was concerned, the common-law rules relating to criminal offences and the article of the Constitution prohibiting torture usually made it possible to charge, prosecute and punish persons responsible for cruel, inhuman or degrading treatment or punishment. The Legal Assistance Centre had said that it had no knowledge of any cases of torture or ill-treatment by members of the Namibian defence forces and that it had determined that torture and ill-treatment by members of the Namibian police had considerably diminished since independence, although there continued to be a few reports of such acts. Generally speaking, torture was obviously not a systematic practice in Namibia; any further cases of ill-treatment would be duly punished.

11. Mr. ZUPANCIC (Country Rapporteur) expressed appreciation for Namibia's initial report and noted that Namibia was a party to the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the Convention on the Rights of the Child. According to article 144 of the Namibian Constitution, general rules of public international law and international agreements binding on Namibia formed part of the law of Namibia, which, however, did not imply that international law took precedence over Namibian law; the Constitution contained no article guaranteeing the application of self-executing treaties and other international agreements when they were inconsistent with national law. Nevertheless, since the Constitution explicitly prohibited torture, that omission did not pose any problems for the Committee.

12. The Namibian authorities were to be complimented on credible reports by various NGOs to the effect that the Government generally respected the fundamental rights of its citizens and that the number of abuses by members of the police and defence forces had been decreasing since independence. Problems appeared to be continuing, however, especially in the north of the country. Perhaps the delegation would enlighten the Committee as to the extent and nature of those problems. The Committee would also appreciate information on the great number of persons detained by SWAPO who remained unaccounted for. Did the Namibian authorities intend to prosecute those responsible for the disappearances, some of whom continued to hold important offices? The provisions contained in article 8 (2) (b) of the Constitution, which proscribed torture, and in article 12 (1) (f), which excluded all evidence derived from forced self-incrimination, were admittedly to be commended, but there were doubts as to whether the Namibian courts followed that rule of criminal procedure, which had constitutional status. There were reports of at least two cases in which suspects (Leopold "Pondo" Salatiel and Emmanuel Shikongo) had been tortured in order to force them to testify: he would like the delegation to provide precise information on those cases and indicate whether those responsible for the ill-treatment had been prosecuted.

13. He would also like clarification of two sentences in the report; paragraph 3 stated that the constitutional proscription of torture formed part of the "justiciable Bill of Rights", while paragraph 4 stated that that provision was "wholly justiciable". Yet the report also stated that the

Convention had not been incorporated into the Namibian legal order but that it was possible to invoke it in a court of law because international agreements binding on Namibia were self-executing. In that connection it would be interesting to know whether there had been any cases where the Convention had been invoked in a court of law and, if so, what the court's decision had been. How did the Namibian authorities imagine that the Convention would be self-executing when most of its provisions required the parliament to enact laws? On what basis could prosecution for an act of torture be initiated when all that existed was the common-law notion of torture and when the term habitually used in police reports was "assault in order to cause grievous bodily harm"? It should be pointed out that torture as defined in article 1 of the Convention was a specific offence: an offence committed by a public official with a specific intent (to obtain a confession, to inflict severe pain or suffering, etc.). Article 1 also required that the crime of torture should be made an exception to the general criminal law's doctrines pertaining to justification and obedience to a superior officer, and that it should be made subject to the general rules on complicity, meaning that a public official should be criminally liable if he knowingly acquiesced in the abuse, even if the act of torture had actually been perpetrated by a person who was not a public official. Any attempted torture was punishable independently of the general rules on attempt; evidence obtained by torture must be declared inadmissible and, in accordance with article 12 of the Convention, the State party must ensure that its competent authorities proceeded to a prompt an impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed. In the light of the definition of torture in article 1, in subsequent reports the Namibian Government should give the precise number of cases in which torture had been prosecuted and provide information on the punishment meted out. Perhaps the delegation could describe the general elements of the crime of torture deriving from common law. Had there been any legal cases concerning torture other than The State v. Michael Matroos, mentioned in the report? Had reports on internal investigations against certain policemen been published? And how did the Namibian authorities plan to prevent ill-treatment in police stations?

14. NGOs reported that in some cases pre-trial detention could last up to one year. Yet according to Namibian law, trials must take place within a reasonable time or the accused must be released. What was the actual situation?

15. Traditional leaders apparently had the right to imprison persons even for minor offences, outside the official judicial system. He wondered whether that was common practice. More generally, Namibia had a special judicial branch, the so-called traditional courts. Clarification would also be welcome on the competence of those courts and on proceedings before them. He would particularly like to know whether the traditional judges were acquainted with the provisions of international law relating to the prohibition of torture.

16. Suspects must be brought before a magistrate within 48 hours of their arrest, which was laudable. He would like to know whether suspects had immediate access to a lawyer, since the prohibition of incommunicado custodial detention had proved to be one of the best preventive measures against torture.

17. In connection with article 3 of the Convention, he referred to reports that illegal immigrants had been denied the right to apply for refugee status. He would like to know whether procedures were in place to verify whether refugees were in danger of being subjected to torture if sent back to their countries of origin. Details on the procedure for obtaining refugee status would also be welcome.

18. The report stated that the Minister of Justice had requested technical assistance from the Centre for Human Rights in drafting legislation that would incorporate certain international human rights instruments in the national legal order. Which instruments were they and was the Convention against Torture among them?

19. He asked whether training aimed at preventing torture was provided only for the police or whether it was also given to members of the armed forces and Prison Service, law-enforcement personnel and medical officers. He also wondered about the impartiality of the disciplinary proceedings against police officers charged with assault or inhuman treatment.

20. He would like to know whether the Extradition Bill had been passed by Parliament. Information on the extradition procedure would be useful, especially as torture was not specifically defined by a law and the hierarchical relationship between decisions of the High Court and the Ministry of Justice was not very clear. Could the Minister of Justice annul a decision of the High Court, for example?

21. The treatment of detainees was governed by the 1959 Prisons Act, as amended in 1981. He would like to know whether a new prisons law was being prepared. As the provisions on capital and corporal punishment had not been repealed, it would be useful to have information on how the relevant legislation was implemented in practice. He would also like to know whether, in addition to internal investigations by the Prison Service, there was an independent body consisting of persons of integrity to inspect the situation in prisons and a similar body to inspect the situation in police cells. He asked whether the Office of the Ombudsman was provided with the resources necessary to perform its functions as prescribed by the Constitution.

22. Referring to the right of victims of acts of torture to obtain damages, he said that article 14 of the Convention stipulated that the dependants of the victim of an act of torture were also entitled to compensation. In the light of paragraph 40 of the report, he wondered whether that was actually the case in Namibia.

23. He cited several reports by credible NGOs of individuals who had allegedly been tortured - in particular by the "Etopola" method, whereby a wire was tied around the victim's head just above the eyes and gradually tightened with a pair of pliers - or who had generally been subjected to ill-treatment. The individuals involved were: Wilhelmina Amesho, Karolina Ashipala and Johannes Angula, Erastus Shikodhi, Shaun and Victor Beech, Evelina Nakadiva Jonathan, Petrus Nangolo Nampala, Aurelia Kaisetesi, Raymond Ndala and Annette Sylvie Makosso. The Committee would like to know whether inquiries had been conducted and, if so, what their status was.

24. Mr. CAMARA (Alternate Country Rapporteur) expressed appreciation for the frank dialogue that had begun between Namibia and the Committee against Torture. After a heroic struggle, Namibia had achieved independence on 21 March 1990. It was remarkable that the last State in Africa to achieve independence was a party to nearly all the international human rights instruments.

25. Paragraphs 4 and 6 of Namibia's report stated that the Convention against Torture was self-executing. He asked what penalties were laid down for acts of torture. Also with regard to paragraph 6, he would like to know whether the bodies responsible for prosecution were independent vis-à-vis the political authorities and, therefore, the torturers themselves.

26. In connection with paragraph 7 of the report, which stated that disciplinary proceedings were dependent on criminal proceedings, he referred to the principle of the separation and independence of disciplinary and criminal proceedings, as the bases for the two were different. Some clarification on that point would be welcome. Paragraph 16 of the report stated that the sentencing of a person convicted of torture was left to the Court's discretion, which called for some explanation. He also wondered about the apparent distinction between junior members of the Prison Service, who were liable to both criminal penalties and disciplinary sanctions, and higher-ranking staff, who were liable only to disciplinary sanctions.

27. There had been two encouraging developments: the establishment of the Legal Assistance Centre, which seemed to play a very useful role and about which he would like more information, and the considerable efforts made to punish offences by police and army personnel. Given Namibia's limited resources, however, the results were not commensurate with those efforts. What was perhaps needed was to strengthen legislation in order to bring it into line with the objective situation.

28. Mr. REGMI, referring to the conditions which had existed in Namibia before independence, welcomed the democratization measures taken. Namibia had adopted a democratic constitution which prohibited torture and emphasized respect for human dignity. A number of laws needed to be enacted, however, in order to give full effect to the Convention.

29. He would like details on a number of points, including the maximum length of pre-trial detention, and the right of an arrested person to consult a lawyer and a doctor, to inform his relatives of his arrest and to be informed of the reasons for his arrest. Detailed information on incommunicado detention and, more generally, on conditions in Namibian prisons would also be welcome.

30. With regard to article 14 of the Convention, he asked what was the maximum compensation payable to torture victims and whether there was any provision for the rehabilitation of victims. Existing provisions on available civil and criminal proceedings (report, paras. 40 and 41) did not appear to be adequate.

31. He expressed regret at the incidents, reported by credible NGOs, which had allegedly taken place in border areas in 1995 and 1996 and the

disappearance of individuals detained by SWAPO prior to independence. The situation still appeared to be unsatisfactory since the number of reported cases of torture during arrest and detention remained high. He would appreciate a detailed explanation of the situation by the Namibian Government.

32. Mr. PIKIS, referring to the implementation of article 2 of the Convention, asked whether there were specific provisions in the Civil Code relating to the offence of torture, since any instance of torture was considered as an act for which criminal or civil proceedings could be instituted. He would also like to know the mandate of the Legal Assistance Centre, how its members were designated and how long it would be continuing its work.

33. In order to have a good understanding of how the offence of torture was punished, it would be useful to know whether Namibian law was based on English common law or on customary law, and what penalties were laid down for the category of offences that included acts of torture. With regard to the implementation of article 11 of the Convention, the report indicated that there was no independent agency for investigating complaints of torture or monitoring conditions of detention in prisons. Was there a register of complaints filed and proceedings instituted? If, as the Legal Assistance Centre had stated (report, para. 28), procedures in respect of persons in police cells were both inadequate and not fully applied, how did the Namibian authorities intend to remedy the problem?

34. The Committee would also appreciate receiving a copy of the results of the investigations that had proved the allegations in paragraph 35 (iii) of the report (Convention, art. 12) to be false. Referring to paragraphs 35 (iv) and 36 (i), he asked whether the prisons contained solitary confinement cells, how long detainees could be placed in solitary confinement and whether they had the right to remain silent when questioned.

35. Generally speaking, the report painted a rather negative picture of the situation: convicted defendants were given very light sentences, many culprits were not prosecuted and civil proceedings were still the main means of obtaining compensation. He asked how the Namibian authorities had reacted to reports by NGOs of numerous cases of torture and the many complaints of ill-treatment lodged. He would suggest that an appropriate infrastructure for guaranteeing the protection of human rights nationwide should be established as a matter of priority.

36. Mr. SORENSEN commended the Namibian Government for its significant accomplishments in the furtherance of human rights. As a physician, he was particularly interested in the implementation of articles 10 and 14 of the Convention. Since the training of medical personnel, in particular doctors working in police stations, prisons and army barracks, was crucial to the prevention of torture, he asked whether the Namibian authorities were planning to organize such training. He stressed the importance of medical rehabilitation for torture victims in specialized centres, which Namibia could establish with assistance from similar institutions in other countries. Finally, he mentioned the United Nations Voluntary Fund for Victims of Torture and said that even a token contribution was always considered to be a sign of interest and respect for the cause of torture victims.

37. Mrs. ILIOPOULOS-STRANGAS commended the Namibian authorities for the great efforts they had made over the past few years. She asked whether the hierarchy of national legislation and international instruments was set forth in the Constitution. If it was not, could the Convention be directly invoked in the courts? And were judges bound to apply it automatically?

38. Mr. BURNS endorsed the remarks made by the preceding speakers. He asked whether there was a penal code in Namibia, whether a customary-law system still existed and how offences were broadly classified. He requested additional information on the powers of the Ombudsman and asked who was responsible for the editorial comments in the report, such as the reference, in paragraph 36 (ii), to the "derisory" nature of a fine imposed on a police inspector found guilty of assault.

39. The CHAIRMAN invited the Namibian delegation to reply to the Committee's questions at its following meeting.

40. Mr. NUJOMA (Namibia) stressed that not all the allegations of torture and ill-treatment referred to were credible, since some originated from political opposition groups whose sole objective was to discredit the Government. His delegation would do its best to reply to members' questions.

41. The Namibian delegation withdrew.

The public part of the meeting rose at 11.50 a.m.